



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 13, 1996

Mr. John Steiner
Division Chief
City of Austin
Department of Law
P.O. Box 1088
Austin, Texas 78767-1088

OR96-0324

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38609.

The Austin Police Department (the "department") received an open records request for certain department records as well as any records held by the department's legal advisor regarding the requestor. You state some of the requested materials have been released to the requestor and that other records do not exist. You seek to withhold certain other records pursuant to sections 552.101 and 552.107(1).¹

You first seek to withhold pursuant to section 552.101 certain materials pertaining to grand jury subpoenas. This office has previously held that where a district attorney, acting as an agent of the grand jury, gathers information pursuant to a subpoena, the information is deemed to be in the constructive possession of the grand jury despite the fact that the information is in the actual possession of the district attorney. Open Records Decision No. 411 (1984). Assuming that the department did not possess a copy of the evidentiary materials prior to the issuance of the subpoenas, *see* Open Records Decision No. 513 (1988), we conclude that these materials held by the department are in the constructive possession of the Travis County Grand Jury. Because section 552.003(b) of the Government Code specifically excludes the judiciary, of which the grand jury is a part,

¹Although you also raised section 552.108 as an exception to disclosure, you have not explained, nor is it apparent to this office, how this particular exception applies to the records at issue. You therefore have not met your burden under section 552.301(b)(1) of the Government Code and this exception is waived. *See* Attorney General Opinion JM-672 (1987).

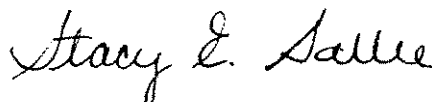
from the provisions of the Open Records Act, we conclude that the subpoenas and the subpoenaed materials are not subject to the Open Records Act and therefore need not be disclosed.

You next contend that certain handwritten records held by the police legal advisor are confidential pursuant to the attorney-client privilege and thus must be withheld from the public pursuant to section 552.107(1) of the Government Code. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *See* Open Records Decision No. 574 (1990)

After reviewing the information at issue, it appears to this office that these records consist solely of notes of conversations between the police legal advisor and the requestor. As such, no portion of these records consist either of an attorney's legal advice or confidential attorney-client communications, despite the fact that some portions of those notes may have been later conveyed to the client police department. Accordingly, we conclude that these handwritten notes must be released to the requestor in their entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/RWP/ch

Ref.: ID# 38609

Enclosures: Submitted documents

cc: Mrs. Fay H. Fritz
P.O. Box 4850
Austin, Texas 78765
(w/o enclosures)